

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:11-CT-3118-D

THOMAS HEYER,)
)
 Plaintiff,)
)
 v.)) JOINT STATUS REPORT
)
 UNITED STATES BUREAU OF)
 PRISONS, et al.,)
)
 Defendants.)

The Defendants, by and through the United States Attorney's Office for the Eastern District of North Carolina, and Thomas Heyer, through Counsel, hereby submit this Status Report in response to this Court's January 18, 2022, Order [D.E. 231].

1. In November 2017, this Court held a bench trial regarding Plaintiff's First Amendment claim. After trial, the Court entered judgment in favor of the Defendants. [D.E. 205]. Plaintiff appealed, and on January 13, 2021, the United States Court of Appeals for the Fourth Circuit reversed and remanded the case to the District Court "for entry of judgment in favor of Heyer as well as any necessary proceedings to determine an appropriate remedy." Heyer v. U.S. Bureau of Prisons, et al., 984 F.3d 347, 366 (4th Cir. 2021) ("Heyer II").

2. On June 4, 2021, Plaintiff filed a motion for this Court to enter judgment in this case. [D.E. 222, 223]. On June 25, 2021, the Defendants moved for an extension of time [D.E. 224] to respond to Plaintiff's motion for entry of judgment.

For good cause, this Court granted the Defendants' request for an extension. [D.E. 225]. On June 28, 2021, Plaintiff moved for reconsideration of the Court's order granting the motion for an extension of time to respond. [D.E. 226, 227].

3. On July 6, 2021, in Plaintiff's civil commitment case, his counsel in that case (the Federal Public Defender's Office), submitted a proposed order of conditional release order for Judge Boyle's consideration, which depended in part on the ability of the United States Probation Office in the District of New Jersey to effectively implement appropriate conditions upon Plaintiff's release. United States v. Heyer, 5:08-HC-2183-BO (E.D.N.C.) at D.E. 193.

4. On July 6, 2021, the United States Probation Office for the District of New Jersey sent a letter to Judge Boyle indicating that at least one proposed condition of Mr. Heyer's release could not be implemented. See D.E. 230-1. The Probation Office requested modification of the proposed conditional release order and to provide ongoing updates to the Court of their efforts and progress in developing an adequate supervision plan for Mr. Heyer. See id. On July 30, 2021, Judge Boyle entered an order stating that the parties had not yet presented a conditional release plan that is "satisfactory to the Court," and directed the parties to that case "to review and survey the availability of adequate and suitable living and treatment facilities for respondent, without limitation to the District of New Jersey." Id. Judge Boyle then conducted a hearing on October 22, 2021 concerning Mr. Heyer's potential conditions of release. United States v. Heyer, 5:08-HC-2183-BO (E.D.N.C.) at D.E. 204. Since that time, the Parties in that case have been attempting to develop an

appropriate release plan. No revised proposed conditional release order has been submitted to Judge Boyle.

5. In this case, Defendants and Plaintiff disagree as to whether the BOP's current accommodations are in compliance with the Fourth Circuit's Opinion in Heyer II.

6. Defendants' Position as to Next Steps: Defendants leave it to the Court's discretion as to whether or not any additional proceedings are necessary at this time.

7. Plaintiff's Position as to Next Steps: Defendants still have not provided Mr. Heyer with point-to-point videophone. Regardless of whether and when Mr. Heyer may be released in the future, the Court should promptly enter judgment in Mr. Heyer's favor consistent with the Fourth Circuit's decision issued over one year ago. Thus, Mr. Heyer respectfully requests that the Court promptly grant Mr. Heyer's Motion for Entry of Judgment (D.E. 222, 223), enter judgment in favor of Mr. Heyer, and enter the final injunction order proposed by Mr. Heyer (D.E. 222-1). Mr. Heyer also respectfully requests that the Court deny Defendants' motion to hold this case in abeyance (D.E. 228) for all the reasons stated in his opposition (D.E. 229).

Respectfully submitted, this 24th day of January 2022.

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CERTIFICATE OF SERVICE

I do hereby certify that I have this 24th day of January 2022 served a copy of the foregoing on all counsel of record by filing with the Court's CM/ECF system.

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